

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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WILFRIDO SOTO,

Petitioner,

v.

JAMES T. CONWAY,

Respondent.

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**ORDER**  
05-CV-56S

1. On January 28, 2005, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254. (Docket No. 1).

2. In a Report and Recommendation filed on February 28, 2008, the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge, recommended that Petitioner's Petition for a Writ of Habeas Corpus be dismissed. (Docket No. 10).

3. No objections to Judge Schroeder's Report and Recommendation were received from either party within ten days of the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has carefully reviewed the Report and Recommendation, as well as the pleadings and materials submitted by the parties, and will accept Judge Schroeder's recommendations.

IT HEREBY IS ORDERED that this Court accepts Judge Schroeder's February 28, 2008 Report and Recommendation (Docket No. 10) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Petition for a Writ of Habeas Corpus (Docket No. 1) is DISMISSED with prejudice, there not having been a substantial showing of the denial of a constitutional right.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith and leave to appeal as a poor person is therefore DENIED.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: March 30, 2008  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge